

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

MIGUEL B. SAMONTE, M.D.

Holder of License No. 30817

For the Practice of Allopathic Medicine
In the State of Arizona

Case No. MD-08-0335A

**CONSENT AGREEMENT FOR
LETTER OF REPRIMAND**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Miguel B. Samonte, M.D. ("Respondent"), the parties agree to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

1 5. This Consent Agreement does not constitute a dismissal or resolution of other
2 matters currently pending before the Board, if any, and does not constitute any waiver,
3 express or implied, of the Board's statutory authority or jurisdiction regarding any other
4 pending or future investigation, action or proceeding. The acceptance of this Consent
5 Agreement does not preclude any other agency, subdivision or officer of this State from
6 instituting other civil or criminal proceedings with respect to the conduct that is the subject
7 of this Consent Agreement.

8 6. All admissions made by Respondent are solely for final disposition of this
9 matter and any subsequent related administrative proceedings or civil litigation involving
10 the Board and Respondent. Therefore, said admissions by Respondent are not intended
11 or made for any other use, such as in the context of another state or federal government
12 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
13 any other state or federal court.

14 7. Upon signing this agreement, and returning this document (or a copy thereof) to
15 the Board's Executive Director, Respondent may not revoke the acceptance of the
16 Consent Agreement. Respondent may not make any modifications to the document. Any
17 modifications to this original document are ineffective and void unless mutually approved
18 by the parties.

19 8. If the Board does not adopt this Consent Agreement, Respondent will not
20 assert as a defense that the Board's consideration of this Consent Agreement constitutes
21 bias, prejudice, prejudgment or other similar defense.

22 9. This Consent Agreement, once approved and signed, is a public record that will
23 be publicly disseminated as a formal action of the Board and will be reported to the
24 National Practitioner Data Bank and to the Arizona Medical Board's website.
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1 10. If any part of the Consent Agreement is later declared void or otherwise
2 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
3 and effect.

4 11. Any violation of this Consent Agreement constitutes unprofessional conduct
5 and may result in disciplinary action. A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,
6 probation, consent agreement or stipulation issued or entered into by the board or its
7 executive director under this chapter") and 32-1451.

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9
10 Miguel Samonte MD
11 MIGUEL B. SAMONTE, M.D.

DATED: 12/04/08

FINDINGS OF FACT

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2 1. The Board is the duly constituted authority for the regulation and control of
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of license number 30817 for the practice of
5 allopathic medicine in the State of Arizona.

6 3. The Board initiated case number MD-08-0335A after receiving notification
7 that conditions were placed on Respondent's medical license in Texas. The imposed
8 conditions were based upon the Texas Board's finding that Respondent violated Texas
9 Board Rule 165.1(a)(9), requiring that any amendment, supplementation, change, or
10 correction in a medical record not made contemporaneously with the act or observation
11 shall be noted by indicating the time and date of the amendment, supplementation,
12 change, or correction, and clearly indicating that there has been an amendment,
13 supplementation, change or correction.

14 4. On October 23, 2006, Respondent provided anesthesia care for a patient
15 having exploratory laparotomy and left salpingo-oophorectomy. The Texas Board found
16 the anesthesia record and the nursing record were in conflict for the time the patient spent
17 in the operating room following the operation. The anesthesia record showed the patient
18 remained intubated while Respondent waited for the muscle relaxant to wear off enough to
19 give a reversal agent. According to the nursing notes, reintubation was attempted at 10:30
20 a.m., which the patient did not tolerate well. Subsequently, the patient developed an
21 arrhythmia, suffered cardiac arrest, and was successfully resuscitated, but did not recover
22 neurologic function. The patient later died. The Texas Board also found that Respondent
23 admitted removing the anesthesia record he created in the operating room on October 23,
24 2006, and replacing it with another version of this record on October 24, 2006. The post-
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1 anesthesia note on the original record was timed at 10:30 a.m. The post-anesthesia note,
2 however, did not appear on the substituted anesthesia record.

3 5. On April 11, 2008, the Texas Board imposed conditions upon Respondent's
4 license for violating Texas Board Rule 165.1(a)(9). Specifically, that Respondent
5 substituted an anesthesia record of October 23, 2006 with another record of October 24,
6 2006. Respondent admitted altering the record and thought that rewriting the report on a
7 new form would provide a clear and accurate account of the event that occurred in the
8 operating room. Respondent was required to complete ten hours of continuing medical
9 education in ethics and medical recordkeeping, to pass a Medical Jurisprudence
10 Examination and pay a civil penalty. The Texas Order is incorporated as referenced.

11 **CONCLUSIONS OF LAW**

12 1. The Board possesses jurisdiction over the subject matter hereof and over
13 Respondent.

14 2. Respondent admits that the Board has substantial evidence that, if accepted
15 by the finder of the facts, would establish unprofessional conduct pursuant to A.R.S. § 32-
16 1401(27)(o)("[a]ction that is taken against a doctor of medicine by another licensing or
17 regulatory jurisdiction . . . for unprofessional conduct as defined by that jurisdiction and
18 that corresponds directly or indirectly to an act of unprofessional conduct prescribed by
19 this paragraph. The action taken may include refusing, denying, revoking or suspending a
20 license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise
21 limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on
22 probation by that jurisdiction."). The corresponding act of unprofessional conduct is in
23 A.R.S. § 32-1401 (27)(e) ("[f]ailing or refusing to maintain adequate records on a patient.").

24 . . .

25 . . .

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for action taken by another jurisdiction, for improperly amending a medical record and for failure to maintain adequate records.

2. This Order is the final disposition of case number MD-08-0335A.

DATED AND EFFECTIVE this 5TH day of FEBRUARY, 2009.



ARIZONA MEDICAL BOARD

By


Lisa S. Wynn
Executive Director

ORIGINAL of the foregoing filed
this 5th day of February, 2009 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed
this 5th day of February, 2009 to:

Michael K. Dean
Ray, Valdez, McChristian & Jeans
101 Summit Avenue
Fort Worth, Texas 76102

EXECUTED COPY of the foregoing mailed
this 5th day of February, 2009 to:

Miguel B. Samonte, M.D.
Address of Record


Investigational Review

LICENSE NO. K-0184

IN THE MATTER OF

THE LICENSE OF

MIGUEL BASA SAMONTE, JR., M.D.

BEFORE THE

TEXAS MEDICAL BOARD

AGREED ORDER

On the 11 day of April, 2008, came up to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Miguel Basa Samonte, Jr., M.D. ("Respondent").

On March 14, 2008, Respondent appeared in person, with counsel David S. Jeans, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Irvin E. Zeitler, D.O., a member of the Board, and Carlos L. Gallardo, a member of a District Review Committee. John Heisler represented Board staff.

Upon the recommendation of the Board's representatives and with the consent of Respondent, the Board makes the following Findings of Fact and Conclusions of Law and enters this Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. K-0184. Respondent was originally issued this license to practice medicine in Texas on June 22, 1996. Respondent is also licensed to practice in the State of Arizona.
3. Respondent is primarily engaged in the practice of anesthesiology. Respondent is not board certified.

4. Respondent is 49 years of age.
5. Respondent has not previously received a disciplinary order from the Board.
6. Respondent provided anesthesia care for YR on October 23, 2006, at Physician's Hospital in El Paso for an exploratory laparotomy and left salpingo-oophorectomy.
7. The anesthesia record and the nursing record are in conflict for the time the patient spent in the operating room (OR) following the operation. The anesthesia record shows YR remained intubated while the Respondent waited for the muscle relaxant to wear off enough to give a reversal agent. Respondent states that he promptly reintubated her when she was unable to maintain oxygen saturation above 90%. However, the nursing record indicates that Respondent extubated YR, then attempted to mask ventilate her for an extended period of time, approximately forty minutes, before reintubating YR.
8. The post-anesthesia note on the original record was timed at 10:30 A.M. That post-anesthesia note does not appear on a substituted anesthesia record.
9. Respondent admits to removing the anesthetic record he created in the operating room on October 23, 2006, and replacing it with another version of this record on October 24, 2006.
10. According to nurses notes, with Respondent at the patient's bedside, re-extubation was attempted at 10:30 A.M., which YR did not tolerate well. The patient failed to improve after reintubation by Respondent.
11. Shortly after the reintubation, the patient developed an arrhythmia, suffered cardiac arrest, a code was called and she was successfully resuscitated, but failed to recover neurologic function in the intensive care unit (ICU).
12. On October 25, 2006, the patient was declared brain dead and support was withdrawn.
13. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.

2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a rule adopted under this Act, specifically, Board Rule 165.1(a)(9), requiring that any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

3. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

4. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

5. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Respondent shall pay an administrative penalty in the amount of \$3000 within 90 days of the date of the entry of this Order. The administrative penalty shall be paid in a single payment by cashier's check or money order payable to the Texas Medical Board and shall be submitted to the Director of Enforcement for the Board for routing so as to be remitted to the Comptroller of Texas for deposit in the general revenue fund. Respondent's failure to pay the administrative penalty as ordered shall constitute grounds for further disciplinary action by the Board, and may result in a referral by the Executive Director of the Board for collection by the Office of the Attorney General.

2. Within 12 months from the date of the entry of this Order, Respondent shall enroll in and successfully complete a total of 10 hours of continuing medical education (CME) in the areas of ethics and medical recordkeeping, in any combination, approved in writing in advance by the Executive Director of the Board. To obtain approval for the course, Respondent shall submit in writing to the Director of Enforcement for the Board information on the course, to include at least a reasonably detailed description of the course content and faculty, as well as the course location and dates of instruction. Respondent shall deliver documentation of attendance and successful completion of this requirement to the Director of Enforcement for the Board on or before the expiration of the time limit set forth for completion of the course. Respondent must personally attend the additional CME courses. Internet completion is not considered personal attendance. The CME referred to herein shall be in addition to any CME required for license renewal.

3. Within one year following the entry of this Order, Respondent shall take and pass with a score of 75 or above the Medical Jurisprudence Examination ("JP Exam") given by the Texas Medical Board. Respondent is allowed three attempts to successfully pass this examination.

Respondent's failure to take and pass the JP Exam within three attempts within one year following the entry of this Order shall constitute a violation of this Agreed Order. After a committee of the Board or a panel of Board representatives (Board Representatives), has considered the information related to Respondent's violation of this provision and has determined that Respondent has not fulfilled the requirements of this provision, Respondent's medical license shall be immediately suspended pursuant to correspondence to Respondent from the Executive Director or Secretary-Treasurer of the Board indicating that Board Representatives have considered the information related to Respondent's violation of this provision and have determined that Respondent has not fulfilled the requirements of this provision. Although Respondent shall be invited to provide information or testimony to the Board Representatives, Respondent specifically waives any administrative due process under the Medical Practice Act, or the Administrative Procedure Act, for the Board Representatives to consider this information. **THIS SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING AT THE STATE OFFICE OF ADMINISTRATIVE HEARINGS OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE MEDICAL PRACTICE ACT OR**

THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS AND ALL RIGHTS OF APPEAL.

Respondent shall be notified of any suspension by certified mail, return receipt requested to Respondent's last known address on file with the Board. If Respondent's license is suspended on such a basis, the suspension shall remain in effect until such time as Respondent takes and passes the JP Exam and subsequently appears before the Board in person and provides sufficient evidence which, in the discretion of the Board, is adequate to show that Respondent possesses the skills and knowledge to safely practice in Texas and is otherwise physically and mentally competent to resume the practice in this state.

4. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

5. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

6. Respondent shall inform the Board in writing of any change of Respondent's mailing or practice address within 10 days of the address change. This information shall be submitted to the Permits Department and the Director of Enforcement for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act.

7. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute unprofessional conduct likely to deceive or defraud the public, or to injure the public, and shall constitute a basis for disciplinary action by the Board against Respondent pursuant to the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

8. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants. This Order

shall automatically terminate upon the successful completion of the requirements in Order Paragraph Nos. 1 through 3.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

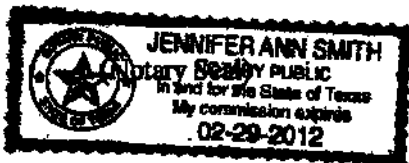
I, MIGUEL BASA SAMONTE, JR., M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 1 April, 2008.

Miguel Basa Samonte, Jr., M.D.
MIGUEL BASA SAMONTE, JR., M.D.
Respondent

STATE OF TEXAS §
COUNTY OF EL PASO §
§

SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 1st day of April, 2008.



Jennifer Ann Smith
Signature of Notary Public

SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
11 day of April, 2008.


Roberta M. Kalafut, D.O., President
Texas Medical Board